



# **Brownfields Workshop for Developers and Local Governments April 1, 2004**



## **The N.C. Brownfields Program *Encouraging Nonresponsible Party Cleanups***

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# Know your audience



# Know your audience

## Any Tarheel Fans?





# North Carolina Perspective



- Brownfields Primer
- What is different about our approach?
- How do we encourage nonresponsible parties to cleanup?
- Why do we do it that way?
- What is the Process (2 Sites)?
- Who Bears the Cost?
- What are the results?

# What are Brownfields?

- **Abandoned, idled, or underutilized** properties where redevelopment is hindered by environmental contamination

# A brownfield?



## Certainly!



# A brownfield?



Nope...a **Brownsfield**

# The Brownfields Process

It all starts with a developer



Who has an idea to redevelop an abandoned property



But he needs a loan from a banker





# The Brownfields Process

But the lender's lawyer  
Says "There might be too  
much liability!"

To find out for sure, the banker  
hires the consultant

"I can burrow underground and tell  
you it'll cost plenty to clean it up."



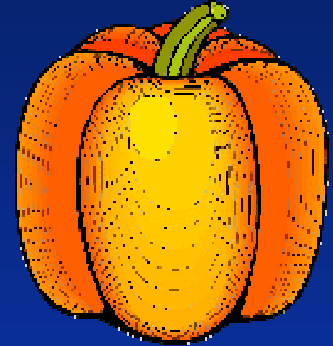
# The Brownfields Process

“To be sure, let’s ask the state regulator.”

But the state regulator doesn’t say much.

“I don’t like his answer,” says the lawyer

“No loan...the deals off,” says the banker.



# The Brownfields Process

“There must be something we can do!”



In steps the Brownfields Program staffer...



“Let’s work on a brownfields agreement!”

# The Brownfields Process



“We can work out the details together or...”



Have your lawyer call our lawyer.

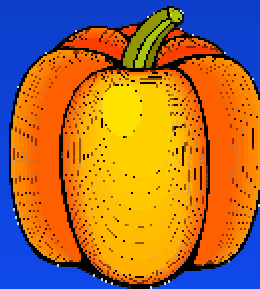
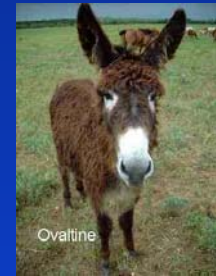


# The Brownfields Process

If we protect public health and the price is right, we can get to groundbreaking.



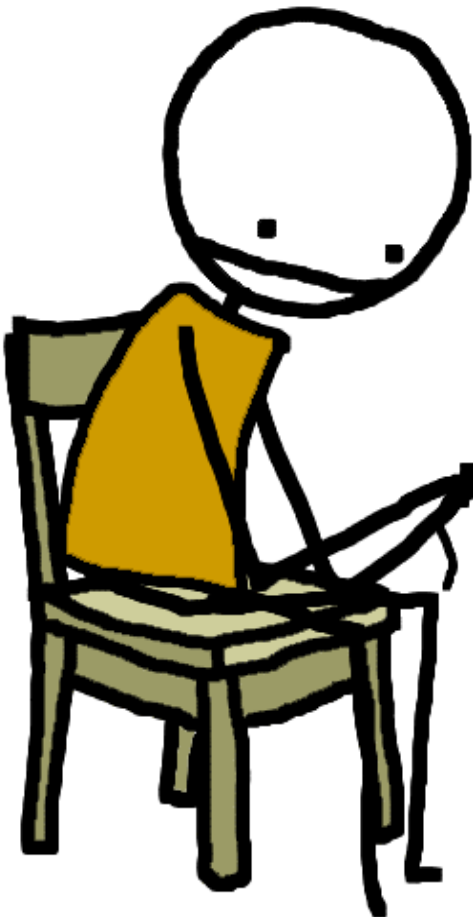
# It takes a lot of Stakeholders





# Barriers to Redevelopment

- **“Mere” Owner Liability**
- **Open Ended Cleanup Cost, especially groundwater**
- **Property Value < Cleanup Cost**
- **Banks Hesitant to Make Loans**



**This might lead straight to hell!**

# The Public Policy Questions

- Why treat the prospective developer of an abandoned property like the site polluter?
- How can we protect the public and the environment without hindering the reuse of the site?

# The Public Policy Answers

- Don't Treat Prospective Developer (PD) Like a Responsible Party
- Make Site "Safe for Reuse" Rather than Force Compliance with Current Standards
- Define Liability in "Brownfield Agreement" for cost certainty to break liability barrier



# What is different about our approach?



## ■ Voluntary Cleanup Program

- ◆ North Carolina Inactive Hazardous Sites Response Act of 1987
- ◆ Focused on remediation by Responsible Parties
- ◆ Real Estate Transaction Driver but not all abandoned or underused

## ■ Brownfields Program

- ◆ Brownfields Property Reuse Act of 1997
- ◆ Focused on redevelopment of abandoned Properties
- ◆ Must be nonresponsible party



# What is different about our approach?



## ■ Voluntary Cleanup Program

- ◆ Responsible Parties Cleanup to Standards
- ◆ Responsible Parties Receive Nothing

## ■ Brownfields Program

- ◆ Nonresponsible Parties to Make Site Safe through Site Specific Risk Based Approach
- ◆ Nonresponsible Parties Receive Incentives



# How do we encourage nonresponsible parties to clean up?



- Recognize Sites as Possible Profit Opportunities
- **Liability Protection** (a brownfields agreement)
- Cleanup for “**Safe Reuse**” rather than a standard
  - ◆ DENR lists necessary actions in brownfields agreement
  - ◆ liability protection contingent on completion
- Local **Property Tax Phased in** over 5 years
  - ◆ Year 1 - Assessed at **10%** of improved value
  - ◆ Year 2 - **25%**
  - ◆ Year 3 - **50%**
  - ◆ Year 4 - **70%**
  - ◆ Year 5 - **90%**





# Why do we do it this way?

- Encourages new cleanups that would never have been undertaken at all
- Brownfields Developers asked logical public policy question...why hold me responsible?...I didn't pollute the site."
- Removes Barriers to Redeveloping Abandoned Sites...not Just Standard Property Transactions
- Preserves "Polluter Pays" Concept
- Sites will not languish after assessment... the developer brings site to us for a rea\$on

# Major Provisions of Brownfields Property Reuse Act (BPRA)

- Prospective Developers (PDs) Only-310.31
- DENR/PD ensure safe redevelopment through “Brownfields Agreement” - 310.32 and 310.33
- Risk-Based Cleanups - 310.33
- Land Use Restrictions Enforceable 310.35(f)
- Ensure Public Benefit is Commensurate with Liability Relief Provided - 310.32
- UST and NPL Sites Excluded

# DENR's New Mission

- Begin New Relationship with Prospective Developers that:
  - ◆ Encourages and Ensures Safe Redevelopment [130A-310.32(a)(2)]
  - ◆ Ensures Public Benefit Commensurate with Liability Relief [130A-310.32(a)(3)]
  - ◆ Obtains Risk Reductions on Brownfield Properties
- Land Reuse Encourages Smart Growth and protects Greenspace

# Brownfield Process: How it Works

- Developer Submits Proposed project with letter of intent
- DENR Screens for Eligibility
- Identify Data Gaps on Risk
- Guide PD's Assessment Work
- Determine Action to Make Site Safe
- Draft Brownfield Agreement
- 60-Day Public Comment Process
- Implement Brownfield Agreement

# Eligibility Screening Criteria

- Must be a redevelopment of an abandoned, idled, underutilized property
- Contamination/perceived contamination hinders redevelopment
- The PD did not cause or contribute to the contamination
- There is public benefit commensurate with liability relief provided
- The PD has ability to carry out actions under the agreement
- Must not be a “UST-only” site

# A Word on USTs

- BPRA excludes Petroleum UST sites from consideration
- If it has UST and other contamination it can still be eligible
- Petroleum from ASTs is eligible
- Legislation before General Assembly to allow USTs into program



# Brownfields Case: Pilot Mill

## Case 1 - “Before” Picture

- Abandoned Textile Mill operated 1890-1960
- Historic Architecturally
- Condemned by City - vagrant “hangout” slated for demolition
- Value = \$200,000
- Cleanup Cost = \$1,000,000+ for groundwater

# Brownfields Case: Pilot Mill



Pilot Mill, Raleigh, N.C. - Before

# Brownfields Case: Pilot Mill

## Brownfields Activities Conducted By Developer

- Reviewed Existing Groundwater Sampling Data
- Conducted Wide Ranging Soil Sampling
- Conducted Risk Assessment
- Negotiated Brownfields Agreement
  - ◆ Capped Mercury Contaminated Areas (in BFA)
  - ◆ Deed Restricted Land Use, Groundwater Use, and Certain Excavations (in BFA)

# Brownfields Case: Pilot Mill

## Case 1 - “After” Picture

- Restored Structure now a fully leased office complex
- Preserved Architecture - National Register of Historic Places
- Value now \$13.5 million or more
- Brownfield Assessment and Cleanup Cost = \$100,000
- Public Funds Spent = \$10,000
- Developer has liability protection and tax incentives that pay for the assessment cost



# Brownfields Case: Pilot Mill



Pilot Mill, Raleigh, N.C. - After  
Raleigh Charter School, and Offices

# Brownfields Case: Penco Products

## Case 2 - “Before” Picture

- Abandoned Alamac textile facility near rural **Hamilton, NC**
- 350 Jobs lost in rural county with 9.8% unemployment rate
- Even though cleanup in progress by responsible party, mere liability to any new owner kept potential purchasers away



# Brownfields Case: Penco Products



- **Penco Products received Brownfields Agreement**
  - Land Use Restrictions and Institutional Controls
  - Risk-Based Measures if Alamac Becomes non-viable
  - Liability Protection

# Brownfields Case: Penco Products

## Case 2 - “After” Picture

- Penco renovated the site for metal products manufacturing
- Hire approximately 300 people, nearly all from the local community
- Alamac (responsible party) is continuing its remediation effort at the site
- Site is Protected if Alamac becomes non-viable

# Brownfields Case: Penco Products

## Penco's Hamilton Plant now in Production

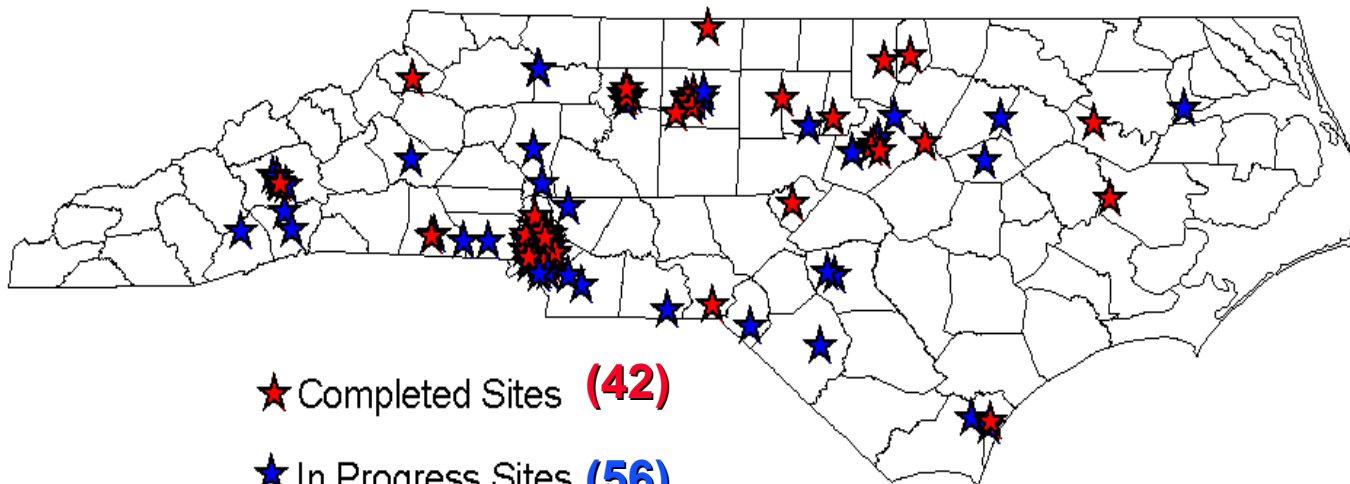




# Other Selected Project Capsules

- **Wilmington:** Turning a Landfill into a 65-acre regional soccer complex while improving landfill cap
- **Winston-Salem:** Abandoned shopping center w/ drycleaning contamination turned into major supermarket in inner city location
- **Wake Forest:** RCRA Cleanup by RP simultaneous to brownfields agreement for purchaser/developer

# Brownfields Program Site Locations - Feb 2004



★ Completed Sites **(42)**

★ In Progress Sites **(56)**

County	Number of Sites
Anson	1
Beaufort	1
Brunswick	1
Buncombe	5
Burke	1
Chowan	1
Cleveland	3
Cumberland	2
Durham	1
Forsyth	5
Gaston	1
Granville	1
Guilford	8
Henderson	2
Iredell	2
Lee	1
Martin	1
Mecklenburg	35
Nash	1
New Hanover	2
Orange	2
Richmond	1
Robeson	1
Rockingham	1
Rowan	1
Scotland	1
Stanley	1
Surry	2
Transylvania	1
Union	2
Vance	1
Wake	7
Watauga	1
Wilson	1
<b>Total</b>	<b>98</b>

# Textile Facilities Seeking Brownfield Agreements

Project Name	Also Known As	Status	City	County
Historic Cotton Mill		Active Elig.	Asheville	Buncombe
Home Innovations	Dan River	Active Elig.	Morven	Anson
Carolina Production		Complete	Asheville	Buncombe
Andrex Industries		Active Elig.	Asheville	Buncombe
National Textiles	Jamestown Road Prpty	Active Elig.	Morganton	Burke
Glen Raven Mills		Active Elig.	Kings Mtn	Cleveland
Shelby Dyeing & Finishing		Active Elig.	Shelby	Cleveland
Wellman Site	Cedar Creek Fibers, LLC	Active Elig.	Fayetteville	Cumberland
Erwin Square		Complete	Durham	Durham
Oxford Printing		Complete	Oxford	Granville
Cotton Mill Square	Lucent Technologies	Complete	Greensboro	Guilford
Guilford Mills		Complete	Greensboro	Guilford
Burlington - Jamestown	Alberdink Boley	Complete	Jamestown	Guilford
Guilford Mills-W. Market St.		Active Elig.	Greensboro	Guilford
Grey Hosiery Mill		Active Elig.	Hendersonville	Henderson
Burlington Mills		Active Elig.	Mooresville	Iredell
Alamac Knit Fabrics		Complete	Hamilton	Martin
Camden Square		Complete	Charlotte	Mecklenburg
Lewith Textile	Wilkinson Business Park	Complete	Charlotte	Mecklenburg
Camden Square Addition		Complete	Charlotte	Mecklenburg
Anchor Mill		Complete	Huntersville	Mecklenburg
Alpha Mills	Consolidated Engravers	Active Elig.	Charlotte	Mecklenburg
Alamac American		Active Elig.	Lumberton	Robeson
Chatham Mfg.		Active Elig.	Elkin	Surry
Chatham Mfg. WWTP		Active Elig.	Elkin	Surry
Pilot Mill		Complete	Raleigh	Wake

# Who Bears the Cost?

## Private Sector \$

- All Assessment Costs
- All Cleanup Costs
- All Development Costs

## State / Federal \$

Oversight of Private Sector work to ensure protection of Public Health and Environment

~ \$8-10K per site



# Putting It All Together

## Federal Program

### ■ Grants to Local Governments

- ◆ Assessment
- ◆ Cleanup
- ◆ Revolving Loan
- ◆ Job Training

### ■ Funding to States

- ◆ State Brownfields Program

## State Program

### ■ Liability Protection to PD

- ◆ Brownfields agreement

### ■ Tax Incentives to PD

- ◆ BF Property tax abatement
- ◆ Bill Lee Act For Job Creation
- ◆ Historic Preservation

# How Does This Coordinate with Federal Program?

**Recall the Federal Grants for Assessment, Cleanup, and Loans....here are some possible synergies:**

- Federal Grant Recipient as PD in State Program
- Federal Grant Recipient sharing costs for assessment or cleanup with PD entering state program
- Best success if Grant Recipient works closely with Developers at front end

# Win - Win - Win

## DENR Likes:

- Risk Reductions on Brownfield Properties
- Land Reuse is Smart Growth
- A brownfield reused is a greenfield preserved

## Local Government Likes:

- Tax Base
- Jobs
- Quality of Life Benefits

## Developer Likes:

- Redevelopment For Profit
- Liability Defined, Reduced Uncertainty



# Brownfields Web Site

## www.ncbrownfields.org

- Guidance
- Statute
- Forms
- Flowchart
- Web Flier

### Land Recycling with the Brownfields Program

The NC Dept. of Environment and Natural Resources



**Smart Growth  
Through  
Smart Land Reuse**

#### The Problem

We have all seen abandoned, idled, or underused properties. Why aren't they being reused? In some cases it is because past users have left the property with chemical contamination from their past operations. Uncertainty in the cost of site cleanup keep prospective developers of these properties away. The result are properties that remain both contaminated and abandoned.

**It is past time that we find a way to safely reuse these properties.** For every brownfield property redeveloped a greenspace property is preserved.

If you are a prospective developer of potentially contaminated properties, you know that environmental liability can cause big headaches. Uncertain site cleanup costs (that often can exceed the property value) can erect barriers to financing that make redevelopment of these properties nonstarters.

Developers of these sites have asked, why make me as liable as the polluter for cleanup of these sites?

#### The Solution

Now there is a program in North Carolina that you should know about that can help you **break the environmental liability barrier**. It creates a win-win-win scenario for the public, the environment, and prospective developers...

### The North Carolina Land Recycling Program Can:

- Treat you, the prospective developer, not as the site polluter but as an ally in the safe redevelopment of these properties
- Provide you a **brownfield agreement** that defines up front those actions necessary to make the site safe for the reuse proposed, eliminating cleanup uncertainty and breaking the barrier to financing. Usually, these "safemaking" actions are less costly than a site cleanup that would be imposed on a polluter.
- Provide significant **property tax relief** for the first five years after redevelopment of the site
- Ensure that the redevelopment is done in a manner that is safe for the public while helping the local community to establish jobs, increase the tax base, and improve the quality of life in the surrounding neighborhood.

#### Success For Redevelopers

Already the program has produced brownfield agreements that have allowed \$55 million worth of private investment at sites such as:

- A Food Lion Grocery Store that is vital for the quality of life in an urban neighborhood in Winston-Salem
- Redevelopment of a crumbling turn-of-the-century textile mill on the National Register of Historic Places into commercial offices in Raleigh
- Redevelopment of abandoned historic manufacturing buildings into the Design Center of the Carolinas in Charlotte

#### Can it work for you?

If you have interest in redeveloping an abandoned, idled, or underused property and did not cause or contribute to its contamination, you might just be eligible.

To find out more, visit us at [wastenot.enr.state.nc.us/sfhome/brnflid.htm](http://wastenot.enr.state.nc.us/sfhome/brnflid.htm)

Or call Bruce Nicholson or Tony Duque with the NC Brownfields Program at (919)733-2801.



# The Brownfields Program

*Come Clean Up With Us!*

**[www.ncbrownfields.org](http://www.ncbrownfields.org)**

## Staff Contacts:

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